

# *Notes on Chinese Law*

## COMMENTARY: AMENDMENTS TO THE CHINESE CONSTITUTION

ON MARCH 29, 1993, the Eighth National People's Congress (the 'NPC') adopted a set of amendments to the 1982 Constitution, which was last revised in 1988 to recognise the private sector of the economy and the sale of land-use rights. The latest revisions were deemed necessary because the Chinese 'economy has undergone great changes and some sections of the Constitution were no longer suited to the needs of the current situation.'<sup>1</sup> As in 1988, therefore, the latest amendments emphasise economic, not political, reform and their adoption has once again brought the Constitution in line with Communist Party policy.

As a result of these amendments, the slogans 'primary stage of socialism,' 'socialism with Chinese characteristics' and 'reform and opening to the outside world' have now been enshrined in the Constitution's preamble, which also adds the goal of making China a 'prosperous and strong' as well as democratic and enlightened country. The most important revision, according to many commentators, is the replacement of 'economic planning on the basis of socialist public ownership' in article 15 with a 'socialist market economy' and reliance on economic legislation and macro-level controls.<sup>2</sup> Consistent with that change, articles 16 and 17 delete references to obligations under the state plan (for state enterprises) and to the guidance of the state plan (for collectives). The designation 'state-run enterprises' (*guoying qiye*) has also been replaced by 'state-owned enterprises' (*guoyou qiye*) in articles 7, 16 and 42, reflecting the increasing separation of ownership from operation and management in state enterprises. Article 17 now downplays the role of collective workers in electing managerial personnel and making major decisions, thereby granting collectives greater freedom of management. In the countryside, the contract responsibility system is formally recognised at the same time that references to communes and agricultural producers' co-operatives are deleted and the system formally abolished (article 8).

<sup>1</sup> People's Daily (*Renmin Ribao*), Feb 17, 1993, p 4.

<sup>2</sup> Despite the emphasis on the market economy and NPC Chairman Qiao Shi's statements that adoption of economic legislation should be speeded up in order to establish a socialist market economy, several major laws were not adopted at this session of the NPC, including both a company law and securities law. People's Daily, Apr 4, 1993, p 3.

What these amendments have failed to do is introduce any comparable political revisions to the Constitution. It is true that the preamble, as a result of a supplementary proposal, now supports the 'system of multi-party co-operation and consultation.' But such parties must still function 'under the leadership of the Chinese Communist Party,' and it is hardly likely this clause will lead to any loosening-up of the one-party system or a diminution of the Party's role. The second 'political' amendment simply increases the term of office for people's congresses at the county level from three to five years (article 98). Moreover, the current round of amendments has left untouched the four cardinal principles (leadership of the Party, the socialist road, the people's democratic dictatorship and Marxism-Leninism-Mao Zedong Thought), despite criticism from some Chinese scholars that such political thought has no place in the Constitution.<sup>3</sup> Nor have any guarantees relating to political or civil rights been introduced, and indeed other recent legislation, such as the National Security Law,<sup>4</sup> will arguably serve to restrict rather than expand such rights.

Though hailed as 'a very important event in the political life of the Chinese people,'<sup>5</sup> these amendments have done little more than track earlier Party decisions and policy formulations. The 'socialist market economy,' for example, received formal approval at the Communist Party's 14th National Congress held in October 1992.<sup>6</sup> The amendment proposals themselves were prepared by the Party's Central Committee for submission to the NPC Standing Committee, which endorsed them in February 1993 and forwarded them to the full National People's Congress.<sup>7</sup> The amendments do grant constitutional recognition to — and were intended to provide reassurance about — economic reform in general and specific reforms like the contract responsibility system in particular. But is it any great comfort when the PRC Constitution is so easily amended or even replaced (this is, of course, the second round of amendments to the fourth constitution since 1954)?<sup>8</sup>

<sup>3</sup> The Standard, Mar 12, 1993, p 6; South China Morning Post, Mar 25, 1993, p 10.

<sup>4</sup> *Zhongguo Renmin Gonghe Guo Guojia Anchuan Fa*, adopted on Feb 22, 1993 by the Standing Committee of the National People's Congress. People's Daily, Feb 23, 1993, p 1.

<sup>5</sup> China Daily, Apr 14, 1993, p 4.

<sup>6</sup> Legal System Daily (*Fazhi Ribao*), Mar 22, 1993, p 1.

<sup>7</sup> People's Daily, Feb 23, 1993, p 1. The text of the proposals for the first eight amendments, dated Feb 14, 1993, appears in the People's Daily, Feb 16, 1993, p 1.

<sup>8</sup> See Legal System Daily, Mar 2, 1993, p 1.

*Amendments to the Constitution of the People's Republic of China, adopted by the Eighth National People's Congress on March 29, 1993*<sup>9</sup>

*Article 3.* The two sentences at the end of the seventh natural paragraph of the Preamble of the Constitution:

'The basic task of the nation in the years to come is to concentrate its energy on advancing socialist modernisation. The Chinese people of all nationalities will, under the leadership of the Chinese Communist Party and the guidance of Marxism-Leninism and Mao Zedong Thought, continue to adhere to the dictatorship of the proletariat, follow the socialist road, steadily perfect socialist institutions, develop socialist democracy, improve the socialist legal system and work hard and self-reliantly to realise the step-by-step modernisation of industry, agriculture, defence and science and technology, to turn our country into a socialist country with a high level of civilisation and democracy.'

are amended to read:

'Our country is in the primary stage of socialism. The basic task of the nation is to concentrate its energy on advancing socialist modernisation, in accordance with the theory of building socialism with Chinese characteristics. The Chinese people of all nationalities will, under the leadership of the Chinese Communist Party and the guidance of Marxism-Leninism and Mao Zedong Thought, continue to adhere to the people's democratic dictatorship, follow the socialist road, uphold reform and opening to the outside world, steadily perfect socialist institutions, develop socialist democracy, improve the socialist legal system and work hard and self-reliantly to realise the step-by-step modernisation of industry, agriculture, defence and science and technology, to turn our country into a prosperous and strong, democratic and enlightened socialist country.'

*Article 4.* The Preamble is amended by adding at the end of the tenth natural paragraph:

'The system of multi-party co-operation and political consultation under the leadership of the Chinese Communist Party will exist and develop for a long time to come.'

<sup>9</sup> The original text appears in the People's Daily, Mar 30, 1993.

*Article 5. Article 7 of the Constitution:*

‘The State-run economy is the sector of the socialist economy under the ownership of the whole people and is the leading force in the national economy. The State ensures the consolidation and development of the State-run economy.’

is amended to read:

The State-owned economy is the sector of the socialist economy under the ownership of the whole people and is the leading force in the national economy. The State ensures the consolidation and development of the State-owned economy.’

*Article 6. The first clause of Article 8 of the Constitution:*

‘Rural people’s communes, agricultural producers co-operatives and other forms of the co-operative economy, such as producers, supply and marketing, credit and consumers co-operatives, constitute the socialist economy collectively owned by the labouring masses. Workers who are members of rural collective economic organisations have the right, within the limits prescribed by law, to farm private plots and hillside plots, engage in household sideline production and raise privately-owned livestock.’

is amended to read:

‘The rural household-based contract responsibility system with remuneration linked to profit and all forms of the co-operative economy, such as producers, supply and marketing, credit and consumers co-operatives, constitute the socialist economy collectively owned by the labouring masses. Workers who are members of rural collective economic organisations have the right, within the limits prescribed by law, to farm private plots and hillside plots, engage in household sideline production and raise privately-owned livestock.’

*Article 7. Article 15 of the Constitution:*

‘The State practises economic planning on the basis of socialist public ownership. The State ensures the proportionate and co-ordinated development of the national economy through overall balancing by economic planning and the supplementary role of market regulation.

Disruption of the socialist economic order or undermining of the State economic plan by any organisation or individual is prohibited.’

is amended to read:

‘The State practises a socialist market economy.

The State strengthens economic legislation and perfects macro-level regulation and control.

The State prohibits disruption of the socialist economic order by any organisation or individual according to law.'

*Article 8.* Article 16 of the Constitution:

'State-run enterprises have autonomy in operation and management within the limits prescribed by law, on condition that they submit to the unified leadership of the State and completely fulfil their obligations under the State plan.

State-run enterprises practise democratic management through staff and worker congresses and in other forms as prescribed by law.'

is amended to read:

'State-owned enterprises have the right to autonomous operation within the limits prescribed by law.

State-owned enterprises practise democratic management through staff and worker congresses and other forms as prescribed by law.'

*Article 9.* Article 17 of the Constitution:

'Collective economic organisations have autonomy to conduct economic activities independently, on condition that they accept the guidance of the State plan and comply with relevant laws.

Collective economic organisations practise democratic management as prescribed by law, with the entire body of their workers electing and removing managerial personnel and deciding major issues of operation and management.'

is amended to read:

'Collective economic organisations have autonomy to conduct economic activities independently, on condition that they comply with relevant laws.

Collective economic organisations practise democratic management, elect and remove managerial personnel and decide major issues of operation and management as prescribed by law.'

*Article 10.* The third clause of Article 42:

'Work is the glorious duty of all citizens with the capacity to work. Workers in State-run enterprises and in urban and rural collective economic organisations should all approach their work with an attitude [appropriate to] the masters of the State. The State promotes socialist labour emulation and rewards model and advanced workers. The State encourages citizens to engage in voluntary labour.'

is amended to read:

‘Work is the glorious duty of all citizens with the capacity to work. Workers in State-owned enterprises and in urban and rural collective organisations should all approach their work with an attitude [appropriate to] the masters of the State. The State promotes socialist labour emulation and rewards model and advanced workers. The State encourages citizens to engage in voluntary labour.’

*Article 11.* Article 98 of the Constitution:

‘The term of office for people’s congresses in provinces, municipalities directly under the central government and cities divided into districts is five years. The term of office for people’s congresses in counties, cities not divided into districts, municipal districts, townships, minority townships and towns is three years.’

is amended to read:

‘The term of office for people’s congresses in provinces, municipalities directly under the central government, counties, cities and municipal districts is five years. The term of office for people’s congresses in townships, minority townships and towns is three years.’

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